

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0165

ADRIAN LEWIS

VERSUS

**RICHARD STALDER, SECRETARY, DEPARTMENT OF
CORRECTIONS; N. BURL CAIN, WARDEN, LOUISIANA STATE
PENITENTIARY; SHIRLEY COODY, ASSISTANT WARDEN;
SERGEANT CALLAHAN AND SERGEANT SEAN SMITH**

RSD

Judgment rendered: November 2, 2007

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number 534,879; Division J(25)
The Honorable Curtis A. Calloway, Judge Presiding**

**Adrian Lewis
Angola, LA**

**Plaintiff/Appellant
In Proper Person**

**Wendell C. Woods
Baton Rouge, LA**

**Counsel for Defendants/Appellees
Richard Stalder, et al.**

Kuhn, J. concurs
Parro, J. concurs.

BEFORE: PARRO, KUHN AND DOWNING, JJ.

DOWNING, J.

Adrian Lewis, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (LPSC), housed at the Louisiana State Penitentiary, Angola, sought judicial review in the 19th Judicial District Court of an adverse decision under the La. Administrative Remedy Procedure Act Proceeding No. LSP-2004-2515. Mr. Lewis alleged that LPSC failed to protect him from an attack by a fellow inmate. He claims that one of the guards was aware that he and his attacker, Michael Ezell, were arguing an hour before he escorted the two of them together into the recreational yard. Mr. Lewis's Petition for Judicial Review contends that the LPSC decision, which states "that the state isn't liable for plaintiff's injury" is erroneous. The only relief requested in the petition is monetary damages.

In the September 29, 2005, Preliminary Screening Report, the 19th JDC Commissioner correctly recommended that the damages portion of petitioner's claim could not be raised in a request for judicial review. See *Madison v. Ward and Stalder*, 00-2842, p. 9 (La.App. 1 Cir. 7/3/02), 825 So.2d 1245, 1253. The Commissioner recommended that his request for monetary damages be stricken from the pleadings, but allowed the purported remaining portion to proceed as a request for judicial review. The court signed a judgment^{1,2} in conformance with the Commissioner's recommendation.

On August 4, 2006, the Commissioner, citing *Jackson v. Phelps*, 95-2294, p. 3 (La. 4/8/96), 672 So.2d 665, 667, recommended affirmance of the LPSC decision on the purported remaining claim. The Commissioner's report states that the record established that the final agency decision was correct when it determined that defendants had no reasonable cause to

¹ This judgment was signed on November 2, 2005.

² No appeal was taken from this judgment.

anticipate the attack on Mr. Lewis. These defendants were, therefore, not liable for his injuries. The trial court upheld the Commissioner's recommendation and signed a judgment³ accordingly. Mr. Lewis appealed this judgment.

We affirm the judgment on jurisdictional grounds. Under La. R. S. 15:1177A, a judicial review is provided to: “[A]ny offender who is aggrieved by an adverse decision, **excluding decisions relative to delictual actions for injury or damages.**” (Emphasis added) Section C of that article states: “Delictual actions for injury or damages shall be filed separately as original civil actions.”

The Commissioner's August 4, 2006, Recommendation states, “that the defendants were not liable for the harm encountered by the petitioner.” The Commissioner recommended that the request for judicial review be dismissed with prejudice.⁴ The judgment dismissed the prisoner's suit by simply affirming that the LPSC decision was not arbitrary, capricious, manifestly erroneous, or in violation of any of the petitioner's constitutional or in violation of any of his constitutional or statutory rights.

However, in this case, the prisoner's only complaint is that the LPSC was not found liable for monetary damages. The procedure the Commissioner followed is correct where an inmate combines a claim for damages with a request for a remedy with respect to a prisoner's condition of confinement. See *NGO v. Estes*, 04-186, p. 4 (La.App. 3 Cir. 9/29/04), 882 So.2d 1262, 1264-65. But here, upon reviewing the record in its totality, it is clear that the petitioner only seeks damages for his injuries.

³ This judgment was signed September 7, 2006.

⁴ The Commissioner's Recommendation report goes into great detail about how the altercation occurred without any prior warning and that the officers took prompt action to break up the fight. If the Commissioner had recommended, and the judge signed, a judgment finding liability only, could the prisoner have filed a delictual action in the proper venue and used this finding of liability, in an administrative proceeding, to preclude the state from contesting liability? Obviously, not!

Louisiana Code of Civil Procedure Article 862 provides that a final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings, even if the latter contain no prayer for general and equitable relief. However, the only relief requested in the petition for judicial review is that the denial of his money damage award be reversed. Accordingly, his is a delictual action that the trial court should have dismissed in its entirety on its' own motion pursuant to La. R.S. 15:1184B⁵ for failure to state a claim for which relief can be granted.

Even so, this court reviews judgments and not reasons for judgment, or by analogy, recommendations. See *Huang v. Bd. Of Trustees for State Colleges*, 99-2805, p. 5 (La.App. 1 Cir. 12/22/00), 781 So.2d 1, 6. Accordingly, we are constrained to affirm the judgment if the result is reasonable in light of the record as a whole. The judgment dismissing the petition for judicial review is correct. Accordingly, we affirm the judgment.

Costs of this appeal are assessed to Adrian Lewis. This memorandum opinion is issued in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B.

AFFIRMED

⁵ La.R.S. 15:1184B provides: The court, on its own motion or on the motion of a party, shall dismiss any prisoner suit if the court is satisfied that the action is frivolous, is malicious, fails to state a cause of action, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted. If the court makes a determination to dismiss the suit based on the content, or lack thereof, of the petition, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies. The court, on its own motion, may raise an exception of improper venue and transfer the suit to a court of proper venue or dismiss the suit.